

REMARKS

This paper is presented in response to the Final Office Action. By this paper, claims 1 and 8 are amended. Claims 1-5, 7-11, and 27-28 are pending.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Final Office Action.

I. GENERAL CONSIDERATIONS

a. claim amendments and/or cancellations

With particular reference to the claim amendments, Applicants note that while various claims have been amended and canceled during the prosecution of this case, such amendments and cancellations have been made in the interest of expediting the allowance of this case. Notwithstanding, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that the claim amendments, claim cancellations or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

b. remarks

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of: additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

Applicants note as well that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teachings and purported prior art status of the cited references at any appropriate time.

II. CLAIM REJECTIONS UNDER 35 U.S.C. §102(b)

Applicants respectfully note that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131.

The Examiner rejected claims 1-3, 5, 7-10 and 27-28 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,668,663 to *Varaprasad et al.* (“*Varaprasad*”) and rejected claims 1-5, 7-11 and 27-28 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 6,193,378 to Tonar et al. (“*Tonar*”). Applicants respectfully disagree but submit that for at least the reasons set forth below, the rejections are moot and should be withdrawn.

By this paper, Applicants have amended independent claims 1 and 8 to recite, in part “...a solid attenuation layer in the form of a single layer...” Support for this amendment can be found throughout the application, including at paragraph [059]. In contrast, the Examiner has not shown that *Varaprasad*, *Tonar*, and/or any other reference(s), either alone or in combination, teach or suggest all the elements of amended claims 1 and 8. For example, the Examiner has characterized *Varaprasad* as disclosing a multi-layer configuration “...the combined electrochromic layer/electrolyte layer form Applicants’ attenuation layer...” *Final Office Action* at 2. As another example, *Tonar* discloses an electrochromic medium that “...is a single layer of material which...includes solution-phase devices where a material is contained in solution in the ionically conducting electrolyte and remains in solution in the electrolyte when electrochemically oxidized or reduced.” *Col. 4, lines 6-14* (see also ‘Example’ at col. 10). *Emphasis added.*

Applicants thus submit that the Examiner has not shown that the references anticipate claims 1 or 8, or their respective dependent claims, at least because the Examiner has not shown that each and every element as set forth in claims 1 and 8 is found in either of the cited references, because the Examiner has not shown that the identical invention is shown in either reference in as complete detail as is contained in claims 1 and 8, and because the Examiner has not shown that either of the cited references teaches all of

the claim elements arranged as required by claims 1 and 8. Applicants thus submit that the rejection of independent claims 1 and 8, as well as the rejection of their respective dependent claims, should be withdrawn.

CONCLUSION

In view of the foregoing, Applicants respectfully submit that each of the claims 1-5, 7-11 and 27-28 now pending in this application is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 23rd day of May, 2008.

Respectfully submitted,

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